No. 688

In the Supreme Court of the United States

OCTOBER TERM, 1948

A. M. MEAD,
Petitioner,

versus

COMMISSIONER OF INTERNAL REVENUE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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COMMISSIONER OF INTERNAL REVENUE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

A. M. Mead prays that a writ of certiorari issue to reverse the judgment of the United States Circuit Court of Appeals for the Fifth Circuit entered in the above cause on November 7, 1942, affirming a decision of the United States Board of Tax Appeals.

OPINIONS BELOW

The United States Board of Tax Appeals on April 2, 1942, made a finding of fact, rendered an opinion and entered a decision denying petitioner's petition for a redetermination of certain income tax deficiencies claimed of petitioner by the Commissioner of Internal Revenue for the years 1937, 1938 and 1939. (R. 17-22).

On review by the United States Circuit Court of Appeals for the Fifth Circuit that court affirmed. (R. 62-64) (Mead vs. Commissioner, 131 F. 2nd 323).

JURISDICTION

The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. A., Sec. 347).

QUESTIONS PRESENTED

1. Whether a husband who has given his wife a half interest in an income producing business and who retains only the remaining half interest can be taxed on the entire income of the business because his motive in making the gift was to minimize taxes.

2. Whether the ownership by a wife of a half interest in an income producing business enterprise, the other half of which belongs to her husband and which under the state laws is a valid and legal partnership, can be disregarded by the Commissioner of Internal Revenue so as to tax the husband with the entire income of the business.

3. Whether the Commissioner of Internal Revenue can disregard the provisions of Revenue Act of 1938, Section 181, 182, 3797 (2) (26 U. S. C. A. 181, 182 3797 (2) (see appendix)) and tax one member of a partnership which is legal and valid under the state law with the entire income of the partnership business.

STATUTES INVOLVED

Revenue Act of 1938, Section 181, 182 3797 (2) (See appendix).

STATEMENT

Petitioner, a resident of Montgomery, Alabama, filed his income tax returns with the Collector of Internal Revenue of the district of his residence for the years 1937, 1938 and 1939, and paid the tax due.

The Commissioner charged petitioner with deficiencies for the three years involved in the amounts of $476.53, $709.11, and $609.70, respectively, a total of $1795.34 on the ground that petitioner was taxable not only on his own income but also on the income of his wife, Bessie M. Mead, who was an equal partner with him in the business conducted in Montgomery, Alabama, under the firm name of Mead & Charles. Bessie Mead had made income tax returns for the three years mentioned and had paid the income tax chargeable to her.

A petition was filed with the United States Board of Tax Appeals by petitioner asking for a redetermination of the deficiencies above mentioned.

The Board denied the petition and the Circuit Court affirmed.

The facts were not in dispute. Briefly stated they are as follows:

In December, 1936, a corporation by the name of Mead & Charles, Inc., was operating a real estate and insurance business in Montgomery, Alabama. The business was that of writing of fire and casualty insurance policies, handling real estate rentals and real estate sales on a commission basis. About fifty per cent of the business was insurance and the other fifty per cent equally divided between rentals and sales.

At that time petitioner was the owner of twenty-eight shares of stock in the corporation. One T. T. Charles owned one share and petitioner's wife, Bessie M. Mead, owned the remaining one share.

At that time, in December 1936, petitioner bought from T. T Charles his share of stock and received an assignment (Record page 26) of all of his interest in the corporation and its assets and the right to use the name which the corporation had used, namely, Mead & Charles. The result was that petitioner and his wife then owned all of the stock in the corporation, petitioner owning twenty-nine shares, his wife one.

Petitioner then, on the same day, December 18, 1936, executed a document (Record page 13) as follows:

STATE OF ALABAMA,
MONTGOMERY COUNTY.

I, A. M. Mead, who as a stockholder and director of Mead & Charles, Inc., became vested as such with title to an undivided interest in the assets of said corporation upon its dissolution and who received also an assignment from T. T. Charles of his undivided interest in the assets of said corporation, do now in consideration of love and affection transfer, assign, set over and deliver to Bessie M. Mead, my wife, that part of my interest in said assets which when taken together with the interest she now already holds in said assets will give her a total of an undivided half interest in the total assets formerly owned by Mead & Charles, Inc., and will leave me an undivided one-half interest in said assets, it being the intention of this assignment that the result shall be that she shall own an undivided half interest in the total of said assets formerly owned by Mead & Charles, Inc., and I shall own the other undivided half interest therein, which said assets include the right to perpetually use the trade name "Mead & Charles".

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 18 day of December, 1936.

A. M. MEAD (SEAL)

Margaret H. Kennamer,
Elizabeth Moseley,
Witnesses.

At that time, December 18, 1936, the assets of the corporation were substantial. Among other assets were corporation accounts receivable valued at several thousand dollars. There was a substantial amount of money in the bank, several thousand dollars. There were valuable books and records showing the expiration dates of a large number of insurance policies called renewals. These renewals were a record of the insurance policies in effect showing the name of the insured, the amount of insurance, the expiration date, and the property insured.

There were also valuable real estate maps and plats showing various pieces of property for sale with the names of the owners and the price asked.

In addition there were valuable books and records showing various real estate maps and plats and showing various pieces of rental real estate with the name of the owner, the name of the tenant and the rental price and various records of leases, rent notes and such documents.

The use of the insurance records, the real estate sales records, the rental records and the mortgage loan records by a staff of trained employees was producing a substantial income.

The effect of the assignment by petitioner to his wife was to vest in her the ownership of a half interest in the business itself, and all its assets, including the money, the accounts, the renewals and other valuable records and also the good will of a going concern. A gift tax

return reporting the gift to his wife was duly filed. (R. 36).

On the same day, December 18, 1936, resolutions were adopted dissolving the corporation as of December 31, 1936. A certificate of dissolution was duly filed in the Probate Office at Montgomery.

On December 31, 1936, a written partnership contract was entered into by petitioner and his wife. (R. 14-14).

On the same day, December 18, 1936, at a meeting of the stockholders and directors, resolutions were adopted dissolving the corporation as of the last day of the year 1936 and these resolutions were duly filed in the Probate Office at Montgomery so as to dissolve the corporation as of the last day of that year, 1936.

On January 1, 1937, the first tax year involved in this case, petitioner and his wife began to do business as a partnership. Their auditor, Mr. Troy, testified as a witness in this case, that he was instructed to do whatever was necessary in all matters pertaining to finance. The insurance companies represented by the agency were notified that thereafter the business would be operated as a partnership. Mrs. Mead with a bank account in her own individual name thereafter made withdrawals from the firm of whatever funds she needed from the partnership profits from time to time by having checks drawn on partnership funds and having these withdrawals deposited in her bank account which she used as she saw fit. It is true that these withdrawals were charged on the books on her husband's ledger sheet but the fact remains that the funds went into her bank account and were hers. It is also true that Mrs. Mead did not withdraw her full one-half of the profits but at the end of each year adjusting entries were made on the partnership books to equalize the charges against each partner. (See explanation Record pages 47, 48, 55). Thereafter a partnership return for each year was duly

filed and each of the partners filed individual returns showing income derived from the partnership business.

No one has ever questioned the following facts

1. The wife originally owned one share out of the total of thirty shares of the corporate stock up to the time the corporation was dissolved.

2. The conveyance to the wife of an additional interest after dissolution was valid under the state law so as to vest in her a half interest in the assets of the business.

3. The partnership contract entered into by petitioner and his wife under which the assets of the business thus jointly owned were used to produce income was valid under the state law.

4. There was no fraud in the dissolution of the corporation, the conveyance to the wife, or in the partnership contract.

In disregard of the foregoing facts the Board of Tax Appeals refused to recognize the wife's ownership because it was "a convenient arrangement between petitioner and his wife to reduce their taxes" and held that "the fact that Alabama law may admit of a partnership between husband and wife is of no importance." The Board thus disregarded the wife's ownership under the state law of half the income earned by the business and could see only the motive for the "arrangement".

The Circuit Court of Appeals likewise disregarded the fact that under the state law the wife was the legal owner of half of the assets of the income producing business and half of the income so produced.

It held that in such a case it is not a question of ownership by the wife or a question of whether under the state law the assets of a business thus jointly owned may be used to produce income which when earned belongs to

the individuals in such corporation as is stipulated in the partnership contract.

It held that "the question turns upon whether the business was in reality a genuine partnership or was operated in partnership form for the purpose of tax avoidance".

Thus both the Board and the court below ignored the actual legal ownership by the wife or the validity of the partnership contract under the state law. They both ignored the provisions of Sections 181, 182 and 3797 (2) of the Revenue Act which indicate very clearly that the Congress intended that an individual engaged in business as a partner shall be taxable only for his share of partnership income.

SPECIFICATION OF ERROR

The Circuit Court of Appeals erred in holding that petitioner, although a member of a partnership legal and valid under the state law, and although the owner of only a half interest in the business and its net profits, was nevertheless taxable with the entire income notwithstanding the provisions of Section 181, 182 and 3797 (2) of the 1938 Revenue Act.

REASONS FOR GRANTING THE WRIT

1. Petitioner has the right to be taxed only upon income which belonged to him. The effect of the decision of the Board and of the court below is to charge petitioner with tax on his wife's income. In addition to the taxes for the three years involved in this case, the decision in this case will govern also his liability for all subsequent years as well.

2. It is important to the multitude of individuals throughout the country who have family partnerships

(as indicated by the very numerous cases which have been reported in the Board and Court reports) and to other litigants or prospective litigants who now have similar cases pending (as is indicated by numerous inquiries from attorneys in other places having similar problems) that this court settle the tax law as to family partnerships. (See petition for certiorari to Fifth Circuit by Ancel Earp now pending in this court in which a similar question is presented.)

3. It is important that the law on this question be announced by the court so that the Commissioner of Internal Revenue in administering the Revenue laws may collect from persons who have a family partnership what revenue the government is entitled to, and no more.

4. The decision of the court below is inconsistent with the decision of this court in *Burnet v. Leininger,* 285 U. S. 136, where this court, by holding that a husband could not assign to his wife an interest in his interest in a partnership business without the consent of the other partners and thus force upon them a new partner, by inference held that in a state where a husband and wife may legally be partners a husband may, where there are no other partners to be consulted, assign an interest to his wife and take her into partnership.

5. A partnership is defined in the Revenue Code Section 3797 (2) as follows:

"When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof - -"

"(2) PARTNERSHIP AND PARTNER.—The term 'partnership' includes a syndicate, group, pool, joint venture, or other unincorporated organiza-

tion, through or by means of which any business, financial operation or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term 'partner' includes a member in such syndicate, group, pool, joint venture, or organization."

This definition is broad. It is broad enough to cover a partnership composed of husband and wife even where the wife's interest is acquired from her husband.

Under this definition it is not necessary for a wife to contribute capital or services in order to become a partner.

The Alabama Supreme Court has held that a husband and wife may become partners. *Macrum v. Smith,* 206 Ala. 466, 91 Sou. 209.

This court in *Helvering vs. Stuart,* 87 L. ed. 109, has held that "Grantees under deeds, wills, and trusts, alike, take according to the rule of the state law". In the note at page 113 is the following:

"The incorporation of local law in federal tax acts has been repeatedly recognized. (citing cases)"

The question of whether the wife owns a half interest in the business is a question of Alabama law. The court below failed to recognize the state law.

6. The Board as well as the court below obviously rested their respective decisions mainly upon the theory that the *motive* for the transfer is the controlling factor, the theory being that petitioner gave his wife a half interest in the business so that she would own half the income and, therefore, neither he nor she would have to pay tax in the higher brackets. The Board refers to a "convenient arrangement . . . to reduce these taxes". The court below inquired as to whether the business "was operated in partnership form for the purpose of tax avoidance."

This theory is in conflict with the long standing rule of this court that—

"Transactions are not invalid merely because undertaken for the purpose of escaping taxation, and where the transaction is bona fide and free from fraud, one may escape taxation by converting taxable property into forms which are not taxable, or by transferring his property to another or by incorporating to avoid future taxes." 61 C. J. 173.

In *U. S. vs. Isham*, 84 U. S. 507, 21 L. ed. 728, this court wrote as follows:

"That if the device is carried out by the means of legal forms, it is subject to no legal censure. To illustrate: The Stamp Act of 1862 imposed a duty of two cents upon a bank check, when drawn for an amount not less than $20. A careful individual having the amount of $20 to pay, pays the same by handing to his creditors two checks of $10 each. He thus draws checks in payment of his debt to the amount of $20, and yet pays no stamp duty. This practice and this system he pursues habitually and persistently. While his operations deprive the Government of the duties it might reasonably expect to receive, it is not perceived that the practice is open to the charge of fraud. He resorts to devices to avoid the payment of duties, but they are not illegal. He has the legal right to split up his evidences of payment and thus to avoid the tax."

Directly in point is the statement in *Gregory vs. Helvering*, 293 U. S. 465, 79 L. ed. 596, recognizing the right of one to minimize his taxes by legal means as follows:

"The legal right of a taxpayer to decrease the amount of what would be his taxes, or altogether to avoid them, cannot be doubted . . . (Citing the Isham

case and others). But the question for determination is whether what was done, apart from the tax motive, was the thing which the statute intended."

7. The Board and the court below were both apparently strongly influenced by the fact that the wife had no drawing account in her own name. She did withdraw amounts which although substantial were less than half of the profits. These withdrawals were deposited in her own checking account and were used by her. Nevertheless, because they were charged to her husband's account on the books, the court concluded that she had not *received* any income from the business other than for household expenses which she had been receiving before she was owner of a half interest. It is entirely immaterial whether she actually drew out her share of the income.

To illustrate the point: Suppose the wife in this case had failed to make a return and had failed to pay tax on her half of the income and suppose that in this controversy she was trying to resist paying income tax on the ground that she had not actually *received* income from the business.

The complete answer would be that under the partnership contract she was *entitled* to receive, as her share, half of the profits and under Revenue Code Section 182 she would be taxable upon her distributive share, "whether distributed or not".

She had the command of the income and would be taxable regardless of whether she actually received it or not. On this point this court has held:

> "It is command of income and its benefits which marks the real owner of property." *Higgins vs. Smith*, 308 U. S. 355.

The income was hers to draw if she wanted to. It was hers to command.

If the income was *hers* it obviously was not *his* and he should not be taxed on it.

In numerous cases the Board of Tax Appeals has upheld husband and wife partnerships where the wife has no account at all on the partnership books.

Kier, 15 B. T. A. 1114.

Newell, 17 B.T.A. 93.

Barnes, 30 Fed. 2nd 289.

Oakley, 24 B. T. A. 1082.

Bartley, 4 B. T. A. 874.

Harrington, 21 B. T. A. 260.

Gunderson, 25 B. T. A. 45.

Hazelwood, 29 B. T. A. 595.

8. The court below was further influenced by the fact that the wife "never took any active part in the management of the business. . ." But this fact has frequently been held to be immaterial.

Ross vs. Comm., 65 Fed. 2nd 616.

Tracy vs. Comm., 70 Fed. 2nd 93.

Bellingrath, 3 B. T. A., 11, husband and wife partnership.

Parshall, 7 B. T. A. 318, husband-wife partnership.

Wilson, 11 B. T. A. 963, husband-wife partnership.

Beggs, 15 B. T. A. 1092, husband-wife and family partnership.

Hinshaw, 16 B. T. A., 1236, husband and wife partnership.

Moyer, 35 B. T. A. 1155, husband and wife partnership.

Hazelwood, 29 B. T. A. 595, husband, wife and family partnership.

9. The decision of the court below is inconsistent with *Blair vs. Comm.*, 30 U. S. 81, where this court upheld as valid the transfer by a father to his children of an interest in an estate. The children thus became the owners of the interest and it was held that the children and not the father were the ones who were taxable on the income, holding that "the tax liability attached to ownership."

Here the wife unquestionably *owned* the half interest. The income from her half interest was taxable to her and not to her husband.

10. In the Board's opinion it is said of the business: "It was in a large measure a personal service business." The court below did not base its opinion upon this ground and we will not lengthen this petition with a discussion of this point. There was no evidence to justify the statement made in the Board's opinion. On the contrary the evidence was undisputed that a business of this kind is property that can be and frequently is bought and sold. It is the ownership of the expiration records, the data, when used by trained employees, that produces the income.

This point was evidently not considered of importance by the court below but if it is so considered by this court the record (R. 28, 39, 43, 44, 50) will show clearly that this was not a personal service business. In this connection, the Board of Tax Appeals, in *Ledbetter vs. Comm.*, B. T. A. Docket No. 10482 (opinion filed January 19, 1942) recognized as valid a partnership where the husband was engaged in the fire and casualty insurance business and gave his wife a half interest and then took her into partnership with him. The facts of the two cases are closely similar and yet the Board did not find in that case that an insurance business is a personal service business.

CONCLUSION

It is respectfully submitted that not only has petitioner unjustly been charged with tax on income which belongs to and is taxable to his wife and on which his wife has already paid the tax but it is submitted also that the law as to family partnerships should be settled by the court not only for the guidance of the multitude of taxpayers who have family partnerships but also for the guidance of the officials charged with the administration of the federal revenue laws.

Respectfully submitted,

FRED S. BALL, JR.

WALTER KNABE

Attorneys for petitioner.

January 1943.

APPENDIX

Revenue Act of 1936, Chapter 690, 49 Stat. 1648, 1709.

"Section 181: Partnership Not Taxable.

"Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity.

"Section 182: Tax of Partners.

"There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year.

"Section 187: Partnership Returns.

"Every partnership shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowed by this title and such other information for the purpose of carrying out the provisions of this title as the Commissioner with the approval of the Secretary may by regulations prescribe, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual. The return shall be sworn to by any one of the partners."

Revenue Act of 1938, Chapter 289, 52 Stat. 447, 521.

"Section 181.

Same as Revenue Act, 1936, above.

"Section 182: Tax of Partners.

"In computing the net income of each partner, he shall include, whether or not distribution is made to him—

"(a). As a part of his short-term capital gains or losses, his distributive share of the net short-term capital gain or loss of the partnership.

"(b). As a part of his long-term capital gains or losses, his distributive share of the net long-term capital gain or loss of the partnership.

"(c). His distributive share of the ordinary net income or the ordinary net loss of the partnership, computed as provided in Section 183 (b), 53 Stat. 69.

"Section 187"

Same as Revenue Act, 1936, above.

"Section 3797.

"When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof — "

"(2). PARTNERSHIP AND PARTNER.—The term 'partnership' includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term 'partner' includes a member in such a syndicate, group, pool, joint venture, or organization."

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CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 688

A. M. MEAD, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 17–22) is unreported. The opinion of the Circuit Court of Appeals (R. 61–63) is reported in 131 F. 2d 323.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered November 7, 1942 (R. 63), and the petition for a writ of certiorari was filed on January 30, 1943. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended.

QUESTION PRESENTED

The taxpayer purported to make a gift to his wife of one-half of the assets of a real estate and insurance business which had formerly been conducted by a corporation of which he owned all but two shares of stock. Although the taxpayer and his wife agreed to conduct the business as a partnership, the taxpayer continued to conduct the business and to give funds to his wife for household expenses just as he had done before the organization of the partnership.

The question presented is whether all the profits of the business are taxable to the taxpayer.

STATUTES INVOLVED

Revenue Act of 1936, c. 690, 49 Stat. 1648:

> SEC. 22. GROSS INCOME.
>
> (a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *
>
> * * * * * *

SEC. 181. PARTNERSHIP NOT TAXABLE.

Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity.

SEC. 182. TAX OF PARTNERS.

There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year.

Revenue Act of 1938, c. 289, 52 Stat. 447:

SEC. 182. TAX OF PARTNERS.

In computing the net income of each partner, he shall include, whether or not distribution is made to him—

* * * * *

(c) His distributive share of the ordinary net income or the ordinary net loss of the partnership, computed as provided in section 183 (b).

Section 22 (a) is identical with Section 22 (a) of the Revenue Act of 1936, *supra,* and Section 181 is identical with Section 181 of the Revenue Act of 1936, *supra.*

STATEMENT

This case involves deficiencies in income taxes for the years 1937, 1938, and 1939 in the respective amounts of $476.53, $709.11, and $609.70 (R. 22).

The facts found by the Board of Tax Appeals may be summarized as follows:

The taxpayer has for a number of years been engaged in the real estate and fire and casualty insurance business in Montgomery, Alabama (R. 17). His business was carried on prior to December 1936, through an Alabama corporation, Mead & Charles, Inc., of which the taxpayer owned 28 shares of stock, his wife, Bessie M. Mead, owned one, and one T. T. Charles owned the remaining share. The taxpayer was the president and active manager of the corporation and received a salary in 1936 of $10,800. During the same year Mrs. Mead was secretary and treasurer of the corporation but she performed no services and received no compensation. (R. 18.)

On December 18, 1936, the stockholders and directors of Mead & Charles, Inc., voted to dissolve the corporation as of December 31, 1936, and the taxpayer purchased from T. T. Charles his interest in the corporation. On the same day the taxpayer executed a document purporting to give his wife a one-half interest in the corporate assets. A gift tax return was filed reporting this gift.[1] (R. 18.)

On December 31, 1936, the corporation was dissolved and the taxpayer and his wife executed a partnership agreement whereby they constituted themselves equal partners in the business previ-

[1] The Board of Tax Appeals made no finding upon the point but the record is clear that no gift tax was paid, the amount of the gift being less than the specific exemption (R. 37).

ously conducted by the corporation (R. 18–19). Paragraph 3 of the agreement provides as follows (R. 19):

> The active management of the partnership business shall be vested in A. M. Mead who shall have unlimited authority to conduct the business of the partnership, sign all contracts, conveyances, mortgages, notes, checks and any other instruments he may see fit to execute on behalf of the partnership and he is also authorized to make any oral arrangements on behalf of the partnership which he may see fit to make, all without limitation.

The taxpayer had a withdrawal account on the books of the partnership for 1937, 1938, and 1939. In 1937 the net income of the business was $10,504.21 and the taxpayer withdrew $9,771.61. Mrs. Mead had no drawing account for these years. Of the amount drawn by the taxpayer in 1937, $3,000 was deposited in Mrs. Mead's checking account. In 1938 the business had a net income of $13,485.60. The records show that the taxpayer drew $12,707.04, of which approximately $3,000 was deposited in Mrs. Mead's checking account. After the formation of the partnership, Mrs. Mead continued to receive such monies for household and personal expenses as she had received before the formation of the partnership. (R. 19–20.) She took no active part in the business but was advised by her husband concerning

any major changes contemplated or undertaken (R. 20).

More than one-half of the income of the business was derived from writing fire and casualty insurance. Renewal records, which disclosed the expiration date of the various insurance policies, were kept in the business. These records enabled the office to rewrite the insurance upon the expiration of the existing policy. Renewal policies were issued and delivered to the insured shortly before the expiration of his old policy, and in most instances the renewal policy would be accepted by the insured. These renewal records were valuable and the taxpayer had occasionally bought the renewal records of other agencies. The selling agency invariably agreed not to reenter the insurance business in the community. (R. 20.)

In his 1937, 1938 and 1939 income tax returns the taxpayer reported as his income one-half the profits of the business conducted under the name of Mead & Charles. The Commissioner determined that all the income derived from the business should be included in the taxpayer's taxable income. (R. 7, 9–13.) The Board of Tax Appeals found that a bona fide partnership did not exist between the taxpayer and his wife in the conduct of the firm of Mead & Charles during the years in question (R. 20). The Circuit Court of Appeals affirmed the Board decision (R. 61–63).

ARGUMENT

The Board's finding that Mrs. Mead contributed neither capital (R. 21) nor services to the business and received from her husband only so much of the profits as was necessary for personal and household needs (R. 19–20) is supported by the evidence and justifies the Board's characterization of this partnership as "a convenient arrangement between petitioner and his wife to reduce their taxes" (R. 20). The arrangement clearly amounted to nothing more than the type of anticipatory assignment of income which has been repeatedly held ineffective to relieve the assignor of tax liability. *Harrison* v. *Schaffner,* 312 U. S. 579; *Helvering* v. *Eubank,* 311 U. S. 122; *Helvering* v. *Horst,* 311 U. S. 112; *Lucas* v. *Earl,* 281 U. S. 111. The form of such arrangements and their validity and nomenclature under state laws are immaterial in the determination of the incidence of federal taxes which is governed by federal law. Cf. *Morgan* v. *Commissioner,* 309 U. S. 78; *Higgins* v. *Smith,* 308 U. S. 473; *Gregory* v. *Helvering,* 293 U. S. 465.

The decision below is in accord with numerous decisions applying the foregoing principles to family partnerships where the parties were not conducting a true joint enterprise. See, e. g., *Earp* v. *Jones,* 131 F. 2d 292 (C. C. A. 10th), certiorari denied, February 15, 1943; *Waldburger* v. *Helvering,* 131 F. 2d 598 (C. C. A. 2d); *Tinkoff*

v. *Commissioner,* 120 F. 2d 564 (C. C. A. 7th); *Covington* v. *Commissioner,* 103 F. 2d 201 (C. C. A. 5th); *Wickham* v. *Commissioner,* 65 F. 2d 527 (C. C. A. 8th); *Kasch* v. *Commissioner,* 63 F. 2d 466 (C. C. A. 5th), certiorari denied, 290 U. S. 644; *Cohan* v. *Commissioner,* 39 F. 2d 540 (C. C. A. 2d); cf. *Burnet* v. *Leininger,* 285 U. S. 136. This Court refused to review the issue less than a month ago in *Earp* v. *Jones,* No. 648, and there is no additional reason for review here.

CONCLUSION

The decision below is correct. There is no conflict. It is, therefore, respectfully submitted that the petition should be denied.

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MARCH 1943.

U. S. GOVERNMENT PRINTING OFFICE: 1943